

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES

)
)
)
)
)
)
)
)
)
)

No. 19-CR-567

Hon. Judge Leinenweber

ROBERT KELLY, et. al.,

DEFENDANT’S MOTION TO PRESERVE LAW ENFORCEMENT NOTES

Defendant, Mr. Kelly, by and through his undersigned counsel, respectfully requests that this Court enter an Order requiring the retention and preservation of all notes and reports made during the course of the investigation of this matter. The scope of this request includes, but is not limited to, the notes and reports of all Federal agents, and all State and local law enforcement personnel that participated in the investigation of any of the events underlying the charges in this case, and states as follows:

1. Mr. Kelly and his counsel request the preservation of all rough notes, memoranda, reports, synopses, text messages, email messages, and videos, which were created or compiled as a result of this investigation, regardless of whether their contents were incorporated into any official record or report.
2. Mr. Kelly and his counsel make this request because law enforcement reports sometimes omit material details which were included in rough notes and which are significant to the defense, including under *Brady v. Maryland*, 373 U.S. 83 (1963).
3. In addition, rough handwritten notes taken during the course of an investigation or while interviewing witnesses are potentially discoverable at trial pursuant to the *Jencks* Act.

4. Typically, the Government responds to requests for agent notes by stating that there is nothing inconsistent between the rough notes and the final reports that are produced to the defense and that, as a result, there is no need to produce the same information in different formats. That response is not well-taken in light of the fact that experience has shown that such inconsistencies often in fact actually exist.

5. Therefore, preservation of all law enforcement notes is particularly important given the nature of the Government's accusation against Mr. Kelly.

6. This request is consistent with the Department of Justice's directives regarding criminal discovery.

7. To ensure that Mr. Kelly's rights to Due Process and under the Confrontation Clause are not violated, he requests that this Court enter an Order requiring all governmental law enforcement officials, including State and local law enforcement agencies and personnel involved in the investigation of this matter, to preserve their notes and reports.

WHEREFORE, Mr. Kelly, by and through his undersigned counsel, respectfully requests the entry of an Order requiring the retention and preservation of all notes and reports made during the course of the investigation of this matter, and for such other and further relief as is appropriate under the circumstances.

RESPECTFULLY SUBMITTED:

By: s/ Michael I. Leonard
Counsel for Defendant Kelly

LEONARDMEYER, LLP

Michael I. Leonard
120 N. LaSalle Street, 20th Floor
Chicago, Illinois 60602
(312)380-6659 (direct)
(312)264-0671 (fax)
mleonard@leonardmeyerllp.com

CERTIFICATE OF SERVICE

The undersigned states that on February 3, 2020, he caused the above to be served on all counsel of record by way of ECF filing it.

RESPECTFULLY SUBMITTED,

By: s/Michael Leonard
Counsel for Defendant Kelly